APPENDIX.

Pertinent Statutory Provisions and Propositions for Which Cited.

(Italics Supplied)

I.

Trustee and Beneficiary Are Separate Taxpayers.

Sec. 219, Revenue Act of 1924 (identical in substance with Sec. 219 of the 1926 Act, and Sections 161-162 of the 1928 Act); Title 26 U. S. C. A. (1925 Ed.) Sec. 960, note:

"(a) The tax imposed by Parts I and II of this chapter (Note 1) shall apply to the income of estates or of any kind of property held in trust, including—

• • • • • • • • • •

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries • •.

"(b) Except as otherwise provided in subdivisions (g) and (h) (Note 2) *the tax shall be computed upon the net income of the estate or trust and shall be paid by the fiduciary.* The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in Section 953 • • • (Note 3) except that—

• • • • • • • • • •

"(2) There shall be allowed as an *additional* deduction in computing the *net income of the estate or trust* the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries • • • but the amount so allowed as a deduction *shall be included in comput-*

Note 1: I. e., the income tax on individuals.

Note 2: These subdivisions relate to revocable trusts and trusts where income is held for or distributed to the grantor of the trust.

Note 3: Section 953 prescribes the method for computing the net income of an individual.

ing the net income of the beneficiaries whether distributed to them or not • • •"

Sec. 2(a)(1) Revenue Acts of 1924 and 1926 (identical with Sec. 701(a) of 1928 Act); Title 26 U. S. C. A. (1925 Ed.) Sec. 1262(a)(1):

"The term 'person' means an *individual*, a *trust or estate*, a partnership, or a corporation."

Sec. 2(a)(9), Revenue Acts of 1924 and 1926 (identical with Sec. 701(a)(13) of 1928 Act); Title 26 U. S. C. A. (1925 Ed.) Sec. 1262(a)(9):

"The term 'taxpayer' means any person subject to a tax imposed by this title."

II.

Where a Deficiency Determined by the Board is Paid Pending Court Review and the Appellate Court Disallows Such Deficiency, the Amount so Paid Must Be Credited or Refunded to the Taxpayer.

Sec. 1001, Revenue Act of 1926 as amended by Revenue Act of 1928; Title 26 U. S. C. A. (1925 Ed.) Sec. 1224:

"(a) The decision of the Board rendered after February 26, 1926 • • • may be reviewed by a Circuit Court of Appeals • • • if a petition for such review is filed by either the Commissioner or the taxpayer within six months after the decision is rendered.

• • • • • • • • • •

"(c) Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, such review shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Board unless a petition for review • • • is duly filed by the taxpayer, and then only if the taxpayer • • • has filed with the Board a bond • • • with surety approved by the Board, conditioned upon the payment of the deficiency as finally determined • • •.

"(d) In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Board is disallowed in whole or in part by the court, *the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor.* • • •"

III.

Board's Decision of Overpayment for 1924 and 1925 Became Final on August 7, 1934, and for 1928 on December 29, 1934.

Sec. 1005, Revenue Act of 1926; Title 26 U. S. C. A. (1925 Ed.) Sec. 1228:

"(a) The decision of the Board shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review (Note 4), if no such petition has been duly filed within such time • • •"

• • • • • • • • • •

"(c) If the decision of the Board is modified or reversed by the Circuit Court of Appeals, and if • • • the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, • • • then the decision of the Board rendered in accordance with the mandate of the Circuit Court of Appeals shall become final *on the expiration of thirty days from the time such decision of the Board was rendered* • •."

IV.

Where Board Determines Overpayment, Duty to Refund is Mandatory, in the Absence of Power to Credit.

Sec. 322, Revenue Act of 1928; Title 26 U. S. C. A. (1925 Ed.) Sec. 2322:

"(d) Overpayment found by Board.—If the Board finds that there is no deficiency and further finds that

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Note 4: Three months, under sec. 1101 of 1932 Act; Title 26 U. S. C. A. (1934 Ed.) sec. 642.

the taxpayer has made an overpayment of tax in respect to the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax paid more than two years before the filing of the claim or the filing of the petition, whichever is earlier."

V.

The Statutory Period for Bringing Suit Against the Widow for Recovery of Refunds to Her Had Expired.

Sec. 610, Revenue Act of 1928; Title 26 U. S. C. A. (1925 Ed.) Sec. 2610:

"(a) Any portion of an internal revenue tax • • • refund of which is erroneously made, within the meaning of section 2608 (Note 5) after May 29, 1927, may be recovered *by suit brought in the name of the United States*, but only if such suit is begun *within two years after the making of such refund.*

"(b) Any portion of an internal revenue tax • • • which has been erroneously refunded (if such refund would not be considered as erroneous under section 2608) may be recovered *by suit brought in the name of the United States*, but only if such suit is begun before the expiration of *two years after the making of such refund or before May 1, 1928*, whichever date is later • • •".

Note 5: Section 2608 provides that a refund made (1) after the expiration of the time for filing claim, where no claim was filed, or (2) after the expiration of the time for filing suit upon a rejected claim, where no suit was filed, shall be considered erroneous.

VI.

Where a Tax is Paid After the Period for Collection Has Expired, It Must Be Refunded.

Sec. 607, Revenue Act of 1928; Title 26 U. S. C. A. (1925 Ed.) Sec 2607:

> "Any tax • • • assessed or paid • • • after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and *shall be credited or refunded to the taxpayer* if claim therefor is filed within the period of limitation for filing such claim."

VII.

An Attempted Credit of an Overpayment Against a Barred Tax Liability is Void.

Sec. 609(a), Revenue Act of 1928; Title 26 U. S. C. A. (1925 Ed.) Sec. 2609(a):

> "• • • Any credit against a liability in respect of *any taxable year shall be void* if any payment in respect of such liability would be considered and overpayment under section 2607 • • •"

VIII.

A Barred Claim May Not Be Interposed by Way of Set-off in the District of Columbia.

Title 24, Section 413, Code D. C.:

> "A defendant who files a plea of set-off, founded on a claim against the plaintiff, shall be deemed to have brought an action at the time of filing such plea against the plaintiff for the matters mentioned in the plea; • • • but the same shall be open to the same defenses to which it would be open in an action brought by him thereon; • • •."